

Burns, Marlene

PA2011-055

From: Wisneski, Brenda
Sent: Tuesday, September 03, 2013 8:06 AM
To: Burns, Marlene
Subject: FW: Woody's Wharf's Application
Attachments: Ltr to Planning Commission 8-30-13.docx

From: K. Stoddard [<mailto:kstoddard1@roadrunner.com>]

Sent: Saturday, August 31, 2013 10:26 AM

To: Bradley Hillgren; Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim

Cc: Kiff, Dave; Brandt, Kim; Wisneski, Brenda; Harp, Aaron; Mulvihill, Leonie

Subject: Woody's Wharf's Application

Dear Planning Commission Chairman Hillgren, Members of the Planning Commission and City Officials:

I am contacting you on behalf of the thirty-five residential owners at the 28th Street Marina Homeowners' Association at 2600 and 2700 Newport Blvd. urging you to completely deny Woody's Application. Please read the attached letter as it contains a large amount of pertinent information.

One critical point that is made on the last page of the letter is that the just-released Staff Report recommending approval of Woody's proposed retractable panel patio roof, does not specify any specific time when the panels are required to be closed. The roof panels must be closed, and remained closed, no later than 10PM nightly. Please add this to the Conditions of Approval.

Please read the entire letter.

Thank you in advance for your time and for giving consideration to the residents' side of this issue.

Sincerely,

Kent Stoddard
28th Street Marina HOA
2600 & 2700 Newport Blvd.



August 30, 2013

Planning Commission Chairman Hillgren
Members of the Planning Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Planning Commission Chairman Hillgren and Members of the Planning Commission:

I am writing on behalf of our thirty-five unit 28th Street Marina Homeowners' Association at 2600 and 2700 Newport Blvd. We are located north of Woody's Wharf on the Rhine Channel. I have been a resident at 2700 Newport Blvd. for over twenty years. I am also a retired Sergeant from the Newport Beach Police Department where I worked for over thirty years.

We are very opposed to Woody's application which would legalize its late night/nightclub operation, change its outdoor patio closing time to 2AM, allow dancing and increase its maximum allowed occupancy level. Approval of this application will result in more crime, more noise and a further deterioration of our already impacted mixed use area.

Please read this entire letter as it contains a large amount of pertinent information.

At 10PM on Thursday, Friday and Saturday nights Woody's becomes a nightclub and its outdoor "dining" patio becomes an extension of its bar. Patrons stand in line and pay a cover charge to enter, they dance to live DJ music with strobe lights and they drink and yell on the bay front patio until 2AM. Until recently, there was no food service after 9PM and that violated Woody's ABC license.

Woody's current operation impacts our area with increased crime, drunks, fights and noise. The Newport Beach Police Department responded to 157 calls at Woody's between January 1, 2012 and July 22, 2013. They included 32 fight and assault calls, 23 miscellaneous disturbance calls, 12 drunk calls and 5 calls relating to drunk drivers. On August 9, 2013, a female patron reportedly attacked a Woody's doorman after he seized her altered ID. Restaurants do not generate calls of this type or number. Woody's has become a blight on the neighborhood and a drain on Police Department resources.

Newport Beach accounts for only 2.78% of the County's population but 4.35% of the County's liquor licenses. Newport's total of 261 liquor licenses is 48% higher than the Orange County city average. Nearly 43% of Newport's liquor licenses are on or bordering the Balboa Peninsula. The crime rate in the area of Woody's Wharf is at least 203% higher than any other area of the City.

We have seen Woody's waiters serving trays of drinks to people on boats docked at their boat docks, to people standing on their boat docks, and, as recently as July 4, 2013, to people standing on the

exterior walkway along the south side of their building. We have also seen Woody's waiters using a small rubber boat to deliver trays of drinks to boats in the middle of the bay. Last summer, a Woody's employee said that Woody's is allowed to serve beer to patrons on boats at its docks. The above activities are all violations of Woody's Alcoholic Beverage Control License. Further, NBMC Section 20.48.090 B.1.a.iii states that alcohol cannot be sold or served "to persons in watercraft."

Since we purchased our homes, the City has allowed a number of businesses and restaurants in our mixed use area to become bars and nightclubs. Rudy's Pub was the Bouzy Rouge restaurant. The Newport Brewery was Delaney's Fish Market. Malarkey's Irish Pub was Tide Office Supply. The El Ranchito was a fish market. Woody's was a restaurant...now it is a nightclub after 10PM. American Junkie (formerly Commonwealth) is a nightclub but a number of years ago it was The Red Onion restaurant. After The Red Onion it became Kantina, then Hooters, then Ten Waterfront, then Commonwealth and now American Junkie. The Newport Beach General Plan states that mixed use areas must be, "highly livable for the residents." Since the City has allowed such an over-proliferation of bars and nightclubs the area has declined significantly and it is no longer in compliance with the General Plan...it is no longer "highly livable for the residents."

Woody's claims that the disturbing noise we hear is not from them, but is from American Junkie (formerly Commonwealth) next door, and that American Junkie's building shields us from any noise that Woody's generates. This is not true. Several of us have clear, unobstructed, direct line-of-sight views of Woody's patio from our second and third floor patios. Further, Woody's generates distinctive crowd roar noise and yelling from its bay front patio and American Junkie's noise is typically music and bass. The noise generated by each establishment is different. I can hear Woody's distinctive crowd roar and yelling from its amphitheater-like bay front patio in my third floor bedroom, almost four blocks away. It is especially disturbing late at night when the ambient noise level is low.

Woody's conducted a "noise measurement survey" on December 21, 2012. It was conducted during the winter, when temperatures at night were in the low 40's, when occupancy levels were not verified and while a temporary tent covered the patio. This survey cannot be representative of the noise Woody's generates during the summer when occupancy levels are at or above capacity and when the tent is not covering the patio. Further, the survey stated that the noise we hear does not originate from Woody's. This is patently not true and speaks to the overall credibility of the survey.

The Newport Beach Police Department has recommended that Woody's application be denied because the modifications requested "often lead to a nightclub type business model." A staff member at NBPD said the Department was "shocked" by the Planning Commission's decision on November 8, 2012, that extended Woody's patio closing time on Friday and Saturday nights from 11PM to Midnight. He asked rhetorically, "Why would you agree to a relaxation of the Permit Conditions when the operator has refused to abide by the current conditions?"

The timing of Woody's application, prior to the completion of the new mixed-use Newport Bay Marina complex with 27 residential units, next door at Woody's south property line, is certainly not an accident. Woody's knows that it must get its application approved before that development is completed.

The City has unfortunately used the terms "patio", "outdoor patio", "deck", and "outdoor deck" interchangeably when referring to Woody's property. Woody's has four outdoor areas: the bay front patio, the narrow walkway along the south side of the building, the boat docks and the parking lot. Woody's Outdoor Dining Permit Condition 2 states, "...the outdoor dining shall be limited to a maximum of 709 sq. ft...." and in Condition 3, "That the use of the outdoor patio shall cease at 11

PM.” The only outdoor area with 709 sq. ft., other than the parking lot and the boat docks, is the patio. Woody’s tries to confuse the issue by referring to a 2008 email from a police detective that incorrectly stated, “...their Use Permit allows them to operate the outdoor patio until close. It is the outdoor “deck” that may not be utilized after 11:00 pm.” There is no “outdoor patio” and “outdoor deck”. They are one and the same and use must cease at 11PM.

Woody’s claims that even though its Live Entertainment Permit clearly states in Condition 3, “Dancing is prohibited” that this means that having a professional performer or dancer is prohibited but it does not mean to prohibit “patron dancing.” Woody’s is trying to distort the direct, unambiguous meaning of Condition 3. “Dancing is prohibited” means...dancing is prohibited. Further, Woody’s claims that it is not required to obtain a Café Dance Permit because it charges a cover charge at the door. Why then did Woody’s apply for a Café Dance Permit in late 2012? The City denied the request.

Woody’s permit conditions are still valid and the violations of those conditions continue to occur, but enforcement stopped over a year ago when Woody’s asked for a hearing concerning its citations, then Woody’s asked for that hearing to be rescheduled, then it submitted the application to the City to “change the operational characteristics of an existing restaurant” and a Planning Commission hearing was scheduled, then Woody’s asked for that hearing to be rescheduled, then it appealed the Planning Commission’s decision to the City Council, then it asked for it to be rescheduled, and then it convinced the City to send the matter back to the Planning Commission. Woody’s has requested, and has received, delays at every stage of the process. This issue and the violations with no enforcement drag on and on...to Woody’s benefit. All the while, Woody’s continues to operate as it wishes in violation of its permit conditions and our neighborhood continues to suffer. Please enforce the current, valid permit conditions during this lengthy process.

Woody’s argument for sending its application back to the Planning Commission was that it has conducted a noise survey and has developed a roof design for its patio and these items were not part of the original application. The noise survey and the roof design do nothing to address the real issue of Woody’s illegal late night operation and therefore this application should not have been sent back to the Planning Commission. The noise survey has no merit for the reasons stated and installing a roof over the patio only addresses one part of the problem. The real issue is that Woody’s is illegally operating as a nightclub (patio use until 2AM, noise and overcrowding, live entertainment and dancing, charging a cover charge at the door, and patrons waiting in line to enter) and that operation is negatively impacting the area.

Woody’s main position is that it is not asking for anything more than what it is already doing. What Woody’s is doing, how it is currently operating, violates several city permit conditions and ordinances. Woody’s somehow believes that it should be rewarded for its long term pattern and practice of willfully violating these conditions and ordinances by the City now legalizing its operation.

On April 24, 2013, three members from our homeowners’ association met with Woody’s operators Greg Pappas, Chris Pappas and Mark Serventi, Woody’s consultant Marty Potts and Woody’s acoustical engineer Fred Greve. Greg Pappas freely admitted that Woody’s is a “nightclub” with a DJ and dancing on Thursday, Friday and Saturday nights and that they use their patio nightly until their 2AM closing. Greg Pappas stated that he did not agree with our “interpretation” of Outdoor Dining Permit Condition 3 and Live Entertainment Permit Condition 2 that state use of the outdoor patio/deck must cease at 11PM. It is a clear, unambiguous prohibition...it is not an “interpretation.” Woody’s management only wanted to discuss their sound measurement survey and their patio roof design at this meeting and not the real issue of their illegal late night operation. Greg Pappas said that Woody’s

has no intention of changing the way it currently operates. Woody's apparently wanted to meet with us so it would look like they were trying to resolve our issues...but without actually trying to do so.

We appeal to the Planning Commission to completely deny Woody's application and to reverse its decision of November 8, 2012, that changed the Friday and Saturday night patio closing time from 11PM to Midnight. The Planning Commission has the responsibility, the power, and the obligation to stop the downward slide of our area caused by the over-proliferation of bars and nightclubs. If a retractable patio roof is approved, we request the following be included in the Conditions of Approval. (Note: the Staff Report dated September 5, 2013 does not require that the retractable roof panels be closed at any specific time. This is of critical importance. Woody's operator Greg Pappas previously stated they would close the roof at 10PM nightly "...or at whatever time you want." This must be included in the Conditions of Approval.)

- All roof panels and roof openings must be closed, and remain closed, at 10PM nightly.
- All exterior patio doors and openings must be closed, and remain closed, at 10PM nightly.
- The existing patio perimeter walls must be replaced with new sound walls designed by an acoustical engineer who will certify that they, in combination with the patio roof, will contain the patio noise within the patio.
- An independent sound measurement survey shall be conducted semi-annually to ensure that the patio noise is contained within the patio. The measurements shall be performed by an acoustical engineer selected by the City and paid for by Woody's. The semi-annual sound measurements shall be conducted without prior notice to Woody's and shall occur between 11:30PM and 1AM on random Friday and Saturday nights. One of the two semi-annual measurements shall occur between July 1 and September 15 of each year. Measurement locations shall be determined by the engineer. The first measurement shall occur upon completion of the roof and sound wall installations. Measurements shall be sent to the City following each survey and retained in file. Measurements showing that the patio noise is not being contained within the patio shall constitute a violation of this condition of approval.

Please support the residents and the Police Department and completely deny Woody's application. To do otherwise would be to reward Woody's for its flagrant, long term pattern of deliberate violations of City Permit Conditions, City Ordinances and its ABC License...and for its disregard for the City and for the nearby residents.

Sincerely,

Kent Stoddard
28th Street Marina Homeowners' Association
2600 & 2700 Newport Blvd.
Newport Beach, CA 92663